Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36
	)	

COMMENTS OF GVNW CONSULTING, INC.

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Executive Summary

In this proceeding, the Commission is continuing the debate that started in 1966 with the initial Computer Inquiry process. To a certain degree the seminal question may be stated as follows: "How should IP-enabled providers pay for the underlying network if their application(s) that ride on top of it do not fit neatly into current intercarrier compensation mechanisms?" We submit that the levels of access charges assessed and paid by IP-enabled service providers that access the PSTN should be at the same level as those currently assessed and paid by interexchange carriers. We recognize that the Commission is currently preparing to address in a comprehensive manner the panoply of intercarrier compensation issues. Until this pending intercarrier compensation proceeding is completed, current rules should be enforced.

In the event that carriers are allowed to avoid paying rural carriers access charges, there will be an immediate impact on rural carrier's ability to deploy broadband facilities. With broadband capacity being prerequisite to many IP-enabled offerings, rural customers will not realize any benefits of potential IP-enabled offerings.

Regardless of which definitional category the Commission chooses for various IP-enabled services, the Commission is obligated to ensure that certain core public concerns are met by providers of these IP-enabled service offerings.

The availability of a pooling option is fundamental to many rural carriers being able to recover the costs of providing DSL in high-cost, rural areas. If such a pooling option is invalidated by the Commission's desire to change the regulatory classification due in part to lobbying pressure, then many rural carriers could be precluded from continuing to provide broadband Internet access to their rural customers.

Introduction

GVNW Consulting, Inc. (GVNW Consulting) respectfully submits comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) (FCC 04-28) on Internet Protocol (IP) – enabled services released March 10, 2004. GVNW Consulting is a management consulting firm providing an array of consulting services to rural carriers throughout the United States and in the Pacific Basin. GVNW clients generally serve high costs areas and offer their rural customers services that include dial-up Internet access, broadband, and video.

In this proceeding, the Commission is continuing the debate that started in 1966 with the initial Computer Inquiry process. The definitional debate as to whether an offering would be defined as a basic or an enhanced service shifted with the adoption of the Telecommunications Act of 1996. After 1996, the definitional dilemma is now framed within the context of determining whether the offering is a telecommunications service versus an information service. We are not at the end game; however, as in many cases the technology still requires some degree of utilization of ILEC facilities. To a certain degree the seminal question may be stated as follows: "How should IP-enabled providers pay for the underlying network if their application(s) that ride on top of it do not fit neatly into current intercarrier compensation mechanisms?"

For purposes of this comment filing, we define IP as a technological standard used to encode and transmit digitized information across a telecommunications network. In this context, IP is a language between communications devices. Broadband refers to the speed of transmission.

THE KEY CRITERIA IN DETERMINING THE TREATMENT OF IP-ENABLED SERVICES SHOULD BE WHETHER THE SERVICE ACCESSES THE PUBLIC SWITCHED TELEPHONE NETWORK

This next step in the transition phase is crucial for the provision of IP-enabled services in rural America. Amidst all the hype concerning IP-enabled services, one important fact appears to have been overlooked. Rural costs are still higher. At a recent Comptel/ASCENT VoIP workshop in Washington, D.C., the Commission's senior deputy chief of the Wireline Competition Bureau, Mr. Jeffrey Carlisle, urged participants to bring their "real world" experiences to the table. For rural carriers, the "real world" means recognizing their different cost structures, and the economic reality that the potential of new technology will only be realized for rural customers if the infrastructure that these converging technologies utilize remains supported.

The Commission itself has framed the debate with its recent AT&T Declaratory Ruling[1], in which it determined that at present, access charges are the appropriate mechanism for ILEC recovery of the costs of providing access to their infrastructure and networks.

In this instant NPRM, the Commission states at paragraph 33 that:

> . . . any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.

Thus, the question is what level of charges should apply. We submit that the levels of access charges assessed and paid by IP-enabled service providers that access the PSTN should be at the same level as those currently assessed and paid by interexchange

[1] Petition for a Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 Order, FCC 04-97, April 21, 2004 (AT&T Declaratory Ruling).

carriers. We recognize that the Commission is currently preparing to address in a comprehensive manner the panoply of intercarrier compensation issues. Until this pending intercarrier compensation proceeding is completed, current rules should be enforced.

This is further substantiated in the recent unanimous decision in the AT&T Declaratory Ruling, in which the Commission determined at paragraph 17 that the use by AT&T of a little IP technology in its transport medium does not create an entitlement to avoid the access charges properly assessed by ILECs. The Commission has properly recognized that the ILEC costs do not change due to AT&T's choices within their own internal network. Continuing in paragraph 18 of the same ruling, the Commission further stated that IP technology should not be deployed as a means of attempting to avoid paying access charges.

In the event that carriers are allowed to avoid paying rural carriers access charges, there will be an immediate impact on rural carrier's ability to deploy broadband facilities. With broadband capacity being prerequisite to many IP-enabled offerings, rural customers will not realize any benefits of potential IP-enabled offerings.

Some parties are becoming frustrated with the Telecommunications Act of 1996 nomenclature of telecommunications versus information services. This has caused some to speculate that the Commission may consider using its ancillary jurisdiction under Title I and its forbearance authority under Section 10 of the Act to provide some definitional alternatives in dealing with new IP-enabled services. Such regulatory creativity does not absolve the Commission from recognizing the important rural carrier issues discussed above.

To review, our present applicable regulatory scheme imposes two types of obligations, carrier obligations as discussed initially above and social (or core public) obligations.

AS DISCUSSED ABOVE, IP-ENABLED SERVICES THAT ACCESS THE PSTN SHOULD BE HELD TO THE CARRIER OBLIGATION OF ACCESS CHARGES

The costs of accessing the PSTN in rural areas are higher than in urban areas. These differences were empirically demonstrated in the work of the Rural Task Force that the Commission itself has cited in numerous proceedings. The costs of rural service areas must be borne equally by all service providers that access it. Without a compensatory recovery system, rural network infrastructure will not be able to be maintained so as to provide the infrastructure that enables IP-enabled services to reach rural customers.

While technology is changing, the rules related to confiscation have not. Allowing services to ride on a carrier's network without any requirement to provide compensation creates a "take and keep" scenario that will allow the IP-provider to take a benefit and keep it, while ignoring the real economic cost involved.

THE COMMISSION MUST DETERMINE HOW TO ENFORCE ITS EXISTING SOCIAL OBLIGATIONS ON IP-ENABLED SERVICES

Regardless of which definitional category the Commission chooses for various IP-enabled services, the Commission is obligated to ensure that certain core public concerns are met by providers of these IP-enabled service offerings. The Commission correctly frames this issue in the instant NPRM at paragraphs 50-60 with the discussion that

customers should not be found lacking for access to certain features that have become the standard to expect in the provision of telephone service in the United States.

The core public concerns that must be met include, but may not be limited to: public safety (E911, CALEA), contributing to universal service, disability access, and network reliability. In seeking to promote emerging IP-based technologies, the Commission must provide a balance that minimizes the risks to public safety interests. The Commission has a duty and responsibility to promulgate standards that recognize the reality of the events of September 11, 2001, and its attendant aftermath, and not merely ignore these challenges in order to promote what some perceive as the Commission's currently preferred service platform.

Public Safety Issues

Customers are entitled to anticipate that the Commission will promulgate regulations that produce E911 functionality from all service providers that hold themselves out to the public as providing a service that is functionally equivalent to a traditional service offering. This may require that providers of IP-enabled service be subject to a regulatory regime that is similar to what is currently applied to competitive carriers. For instance, the Commission should consider requiring that any IP-enabled service provider route all emergency calls over dedicated "911" networks and participate in E911 services.

Universal Service Contributions

At paragraph 63 of the instant NPRM, the Commission requests comments on how the regulatory classification of IP-enabled services impacts universal service contribution obligations.

Under the provisions of Section 254 of the Telecommunications Act of 1996, specific, predictable, and sufficient mechanisms are required in order to preserve and advance universal service. Six years ago, the Commission indicated in the 1998 Report to Congress that it possesses within the scope of its authority under Section 254(d) the ability to assign to facilities-based broadband Internet access providers the obligation to contribute to universal service. With the proliferation of IP-enabled services, the Commission is now faced with determining whether to invoke its previously determined scope of authority in an attempt to provide a smooth transition with respect to universal service funding.

We recommend that the Commission invoke its authority to require facilities-based broadband Internet access providers with the obligation to contribute to universal service funding. This recommendation would be a significant change from current policies that place the burden solely on wireline DSL providers. We believe that the principle of competitive neutrality serves to support making the recommended change.

Disability Access

The burden of meeting the needs of customers with disabilities should not be defaulted to the incumbent local exchange carriers. A consumer with a disability should not be precluded from carrier choice because the Commission is unwilling to place a share of this core public obligation on IP-enabled service providers.

ANY CHANGE IN REGULATORY CLASSIFICATION OF DSL SHOULD NOT LIMIT THE ABILITY OF SMALL RURAL CARRIERS TO REFLECT DSL COSTS IN NECA REVENUE POOLING

One of the more thoroughly debated aspects of the instant NPRM is the potential classification change proposed for DSL services, and what the impact of such a change to an information service category would have for rural carrier cost recovery.

To this point, rural carriers that have invested in infrastructure supporting the provision of DSL services have ameliorated the risk of low population density with the ability to participate in the revenue pooling process administered by the National Exchange Carrier Association. The availability of a continued pooling option is fundamental to many rural carriers being able to recover the costs of providing DSL in high-cost, rural areas.

If such a pooling option is invalidated by the Commission's desire to change the regulatory classification due in part to the lobbying pressure from the RBOCs, then many rural carriers could be precluded from continuing to provide broadband Internet access to their rural customers.

The results of a recent OPASTCO survey indicated that 63% of survey respondents use the DSL tariffs available in the National Exchange Carrier Association pools. A cessation of such an option could result in significant rate increases for rural customers, and a curtailment of the expansion of DSL service to customers at the edge of the exchange. Such an outcome does not reconcile with the requirements of Section 706 of the Telecommunications Act of 1996, which has a clearly stated goal of timely deployment of advanced services to all Americans.

Conclusion

The costs of the public switched telephone network in rural areas must be paid for by all service providers that access the infrastructure. Any changes to intercarrier compensation rules must ensure that carriers that access rural carrier facilities, regardless of the technology used, pay for the privilege and not be allowed to "take and keep".

Absent a compensatory set of revenue streams and support mechanisms, the high-cost networks of rural ILECs will not bring to rural customers the Telecommunications Act of 1996 promise of comparable services at comparable rates.

Respectfully submitted

Submitted via FCC electronic filing system

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